Postal Regulatory Commission
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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Periodic Reporting
(Proposal Seven)

Docket No. RM2023-2

PUBLIC REPRESENTATIVE COMMENTS

(December 27, 2022)

I. INTRODUCTION

The Public Representative hereby provides comments in response to Commission Order No. 6369.[1] In that order, the Commission established Docket No. RM2023-2 to receive comments from interested persons, including the undersigned Public Representative, that address the Postal Service's petition to change analytical principles relating to periodic reports.[2] The Postal Service filed the Petition pursuant to 39 C.F.R. § 3050.11. Petition, Proposal at 1.

II. BACKGROUND

In Proposal Seven the Postal Service proposes a change in treatment for the forgiveness of its retirement health benefit (RHB) prefunding expenses by the Postal Service Reform Act (PSRA). *Id.* Between FY 2012 through FY 2021 the Postal Service accrued approximately $57 billion in unpaid RHB payments. As a result of the PSRA, a one-time adjustment removed that liability from the Postal Service's Balance Sheet and reversed the unpaid RHB expenses accrued in prior years. The Postal Service proposes to segregate this one-time reversal from other FY 2022 costs that are

[1] Notice of Proposed Rulemaking on Analytical Principles Used in Periodic Reporting (Proposal Seven), December 13, 2022 (Order No. 6369).

[2] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Seven), December 12, 2022 (Petition).

accounted for in the CRA report, avoiding the effects that including the reversal would have on the institutional cost calculation and disruption to regulatory functions. *Id.* at 3.

The Postal Service sent a letter to the Commission on August 12, 2022, explaining how it intended to treat this one-time accounting adjustment as it relates to the FY 2022 Form 10-K report and the FY 2022 Annual Compliance Report (ACR), more specifically the Cost and Revenue Analysis Report (CRA) that is filed as part of the ACR.[3] In its letter, the Postal Service outlined how it intended to treat the adjustment as a one-time reduction in the FY 2022 Operating Expenses, with significant effects on the FY 2022 Net Income/Loss. Postal Service Letter at 1. According to the Postal Service, this treatment in its financial reports is dictated by accounting standards. *Id*.

The Postal Service distinguished its treatment of the reversal in the CRA report (submitted each year as part of the ACR) as primarily a regulatory function, not an accounting function. The Postal Service noted that the CRA report does not include a row for Net Income/Loss. *Id.* Rather the focus of the CRA is on costs and revenues by products and groups of products. It allows the evaluation of compliance with statutory and regulatory policies. *Id*. at 2. For this reason, the Postal Service intended to omit the $57 billion one-time reversal from the Reallocated Trial Balance and as a result the adjustment would not be reflected in the FY 2022 CRA report. Total Costs in the Reallocated Trial Balance would differ from the Total Costs in the General Ledger by the $57 billion. *Id*. at 2. According to the Postal Service, omitting the $57 billion adjustment will keep the FY 2022 CRA report "within the same general magnitude as experienced in recent years". *Id.* The letter explained that if the CRA were to recognize the PSRA's massive, one-time reversal relating to prior years' retiree health benefit expenses, the result would almost certainly be negative total institutional costs in FY 2022. *Id.* This would render the level of all other FY 2022 as essentially irrelevant. With negative institutional costs, regulatory issues would arise with the appropriate share provision as well as the imputed Federal income tax calculation. *Id*.

[3] Letter to Erica A. Barker, Secretary and Chief Administrative Officer, August 12, 2022 (Postal Service Letter), available at https://www.prc.gov/docs/122/122469/Lttr%20re%20PSRA%20Effects%20ACR%20CRA.pdf.

On October 7, 2022, the Commission filed a response letter to the Postal Service regarding its treatment of the RHB reversal for both the FY 2022 Form 10-K report and CRA report.[4] In their response letter the Commission mentions certain guidance regarding the accounting treatment of the adjustment. Specifically, they reference several accounting standards which suggest that extinguishment of a liability is not considered earned by an entity's operations and not related to the entity's costs of providing goods or services. PRC Response at 2-3. The Commission ultimately accepted the Postal Services treatment in the CRA report, with the addition of an explanatory note presenting the adjustment as a quantitative reconciliation from the amount in the Total cost row on the CRA to the sum of Total Operating Expenses and Interest Expense rows on the Statement of Operations on the FY 2022 10-K report. *Id*. at 4.

On October 13, 2022, a group of mailer associations submitted a letter requesting reconsideration of the Commission's letter.[5] In the letter they argued the treatment proposed by the Postal Service constitutes a change to accepted analytical principles, and that the Commission's rules do not allow changes in analytical principles by unilateral letter notice. Mailers' Letter at 2. They noted that the retiree health benefit costs have been considered institutional costs in prior ACR reviews and for the past 2 years the costs have been part of the institutional costs used to calculate the density factor. *Id*. at 3. The Mailers argued that the Commission's approval of the proposed treatment of prior years' RHB costs is a reversal of the Commission's treatment of those obligations in the past. *Id*. Furthermore they contend that the Commission's approval is contradictory to prior Commission findings and is inadequately explained. *Id*. at 4-5. They claim that the proposed treatment will have a negative impact on market dominant mailers (as a result of the use of the institutional cost ratio to calculate the density-

[4] Letter from Erica A. Barker, Secretary and Chief Administrative Officer to Richard T. Cooper, Managing Counsel, Corporate and Postal Business Law, October 7, 2022, available at https://www.prc.gov/docs/123/123096/Response%20Letter.pdf.

[5] Letter to Erica A. Barker, Secretary and Chief Administrative Officer, October 13, 2022, styled Motion for Reconsideration of Response to the Postal Service's Proposed Changes to Accepted Analytical Principles (Mailers' Letter), available at https://www.prc.gov/docs/123/123145/Motion%20for%20Reconsideration_PropChange_.pdf. The motion did not conform to Commission procedures for filing motions. Representatives of 13 mailer organizations, including GCA, signed the letter (Mailers Letter).

based authority), but argue that if the $57 billion is accounted for, it nullifies the density-based authority. *Id*. at 5-6.

On November 4, 2022, the Greeting Card Association (GCA) filed a formal Petition for reconsideration and initiation of proceeding pursuant to 39 C.F.R. § 3050.11 arguing the Postal Service's proposed treatment must be assessed in a rulemaking docket pursuant to 5 U.S.C. § 553 to provide opportunity for public comment that it believes is mandatory.[6]

The Postal Service responded to GCA's Petition on November 10, 2022.[7] It argued that the treatment of a steady series of annual prefunding expenses does not establish treatment of a one-time extraordinary reversal of decade's worth of accrued expenses. Postal Service Response 3-4. The Postal Service argued that rather than establishing or amending its regulations, the Commission's letter interprets its current regulations. *Id.* Specifically, the letter discusses the application of its rules in highly unusual circumstances with no pretense of effects in the future. *Id*. The Postal Service also notes that its original letter was published on the Commission's website, providing all interested parties almost two months to identify concerns. *Id*. at 5. They argue that the Mailers' letter does not address the specific regulatory interference that would result from including the negative $57 billion in the calculation of institutional costs. The Postal Service noted that the Mailers offer no mechanism for evaluating appropriate minimum share of institutional costs if they are negative; nor do they offer an explanation of how to calculate the imputed tax payment for competitive products without and appropriate share previously being calculated. *Id*. at 5-6. The Postal Service argued that the Mailers letter neglects to appropriately explain how the density authority would be affected by the inclusion of the $57 billion in the CRA report. They argue that density authority is specifically intended to offset unavoidable increases in per-unit costs caused by the decline in mail density and that none of the density authority drivers were affected by the passage of the PSRA. *Id*. at 7. According to the Postal Service, mail volumes are still declining, and delivery points are still increasing. The Postal Service argued that

[6] Petition for Reconsideration and Initiation of Proceeding, November 4, 2022 (Petition).

[7] Response of the United States Postal Service in Opposition to GCA Petition for Reconsideration and Initiation of Proceeding, November 10, 2022 (Postal Service Response).

including the $57 billion reversal would constitute interference with appropriate regulatory functions. *Id*.

Ultimately the Commission granted GCA's petition (in part) for reconsideration of the Commission's position in its October 7, 2022 letter.[8] In the Order, the Commission identified two central issues based on the Mailers' Letter and subsequent filings; first that the PSRA forgiveness of unpaid RHB liabilities constitutes a change in accepted methodology and second if the non-accrual of the RHB amortization and normal costs of FY 2022 constitute a change in accepted procedure. Order No. 6363 at 7. The Commission withdrew its approval of the October 7, 2022 letter to the Postal Service explaining that their interpretation of the Postal Service's proposed treatment of the $57 billion extinguishment of RHB prefunding liability would be treated as a "gain". *Id*. The Commission references the same accounting guidelines noted in its October 7, 2022, letter which provide guidance on accounting for extinguishments of liabilities. *Id*. The Commission explained that the treatment of the $57 billion adjustment in recent filing's (the FY 2022 Form 10-K) did not match the Commission's expectations. *Id*. The Commission further explained that the treatment of the reversal as a negative adjustment (credit) to expense Account No. 51265.000 (Retirement Health Benefit Amortization) is the same used by the Postal Service to accrue the unpaid RHB costs in FY 2012 through FY 2021 and as a result, a request for a change in analytical principles is necessary. The Commission contended that in accordance with 39 C.F.R. § 3050.1(a), an accepted analytical principle refers to an analytical principle that was applied by the Commission in its most recent Annual Compliance Determination (ACD) unless a different analytical principle subsequently was accepted by the Commission in a final rule. *Id*. at 9. Because the Postal Service used the same accounting treatment for the reversal as they did the prior years unpaid RHB costs, a change in analytical principles in necessary. *Id*.

The Commission also addressed the treatment of amortization and normal costs. They argue that PSRA section 102 repealed former 5 U.S.C. § 8909a(d) requiring the Postal Service to make the amortization and normal cost payments and replaced it with a new requirement that the Postal Service pay into the Postal Service Retiree Health

[8] Order No. 6363, Order Granting Petition, in Part, for Reconsideration, December 9, 2022.

Benefit Fund (PSRHBF) for current retiree health care costs equal to premiums minus the cost of annual claims paid. *Id*. at 11. They concluded that accepted analytical principles state that the Postal Service is not required to include costs that are not incurred and under the accepted methodology there are no amortization and normal costs to include for FY 2022. The Commission invited Mailers to who seek a change in analytical principle to petition the Commission for a change pursuant to 39 C.F.R. part 3050. *Id*.

III. SUMMARY

Following the Commission's recommendations in Order No. 6363, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[9] Proposal Seven seeks approval for the treatment of the one-time reversal of the Postal Service's unpaid RHB expenses that were accrued in prior years resulting from the passage of the PSRA. Petition, Proposal Seven at 1.

The Postal Service seeks to address the appropriate regulatory treatment to one-time accounting occurrences that are the result of statutory change. *Id.* at 3. It specifically proposes to make a one-time adjustment in the FY 2022 ACR to exclude from institutional costs the $57 billion reversal by the PSRA of all unpaid RHB expenses accrued between FY 2012 and FY 2021. *Id*.

In past years following the passage of the PAEA, consistent with GAAP, the Postal Service accrued unpaid RHB expenses in each year. The Postal Service asserts that "it was entirely rational during those years to treat those accrued expenses each year like all other expenses for that year". *Id.* at 4. Furthermore, they argue that this default treatment does not constitute the appropriate procedure of the sudden and unprecedented occurrence of a one-time reversal of years' worth of accrued expenses. *Id*. The Postal Service recognizes the general agreement among the parties involved that including the $57 billion reversal would result in a very large negative number for institutional costs. *Id.* at 5. The result of which would create significant regulatory issues

[9] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Seven), December 12, 2022 (Petition).

with the appropriate share provision and the calculation of imputed Federal income tax. *Id*. The Postal Service also argues that including the reversal (and thus sending institutional costs into the negative) would nullify the density-based rate authority which would disrupt the regulatory rationale behind the density-based authority. *Id*. at 5-7.

To avoid these regulatory disruptions the Postal Services proposes two possible methods for how to treat the $57 billion reversal for regulatory purposes in the CRA report. The first and preferable approach outlined by the Postal Service is to “zero out” Component 203 in the Cost Segment 18 tab of the Reallocated Trial Balance. This method would omit the reallocation of the negative $57 billion from Trial Balance account 51265.000 into Component 203. *Id*. at 8. As a result, the Total Costs at the bottom of the CRA would differ from the Total Operating Expenses, Impact of Postal Service Reform Legislation, and Interest Expense rows of the Statement of Operations in its 10-K report by the amount recorded in account number 51265.000. *Id*. According to the Postal Service, this method ensures that institutional costs are not inappropriately affected. *Id*.

The alternative approach would reallocate the $57 billion in account number 51265.000 to a “Miscellaneous Items” row in the CRA, segregating it from the “All Other” row that identifies the institutional costs. *Id*. at 9. According to the Postal Service, this method results in the same desired outcome (that the $57 billion reversal is not included in institutional costs). *Id*. The Postal Service notes that the reporting category of “Miscellaneous Items” has typically been used only the Revenue column of the CRA report, but that it could be expanded to encompass Miscellaneous Costs as well. *Id*. Under this procedure, instead of account number 51265.00 being reallocated to Component 203 in Cost Segment 18, it would be reallocated to a new Miscellaneous Costs tab in the Reallocated Trial Balance. The adjustment would then flow to the CRA but instead of being included in institutional costs, it would be listed in the Miscellaneous Items section at the end of the CRA report, separate from the “All Other” institutional costs. *Id*. The Postal Service notes that presumably this procedure would be authorized for FY 2022 only and in the future Miscellaneous Items on the CRA report would revert back to revenue only. *Id.* at 10.

IV. Comments

The Public Representative has reviewed the Postal Service's petition and all correspondence among the parties involved. The central issue in the Postal Service's request is the regulatory treatment of a one-time reversal of prior years' unpaid RHB expenses. The Postal Service seeks approval to treat the one-time reversal of RHB expenses using the same Trial Balance account that prior year RHB expenses were recorded in but changing the method of reallocating that account to the FY 2022 CRA report. The issue is the regulatory treatment of this reversal and the effects said treatment has on the institutional costs calculated in the FY 2022 CRA report, and all subsequent calculations that use institutional costs; specifically noted are the appropriate share provision, imputed Federal income tax for Competitive products, and density-based rate authority.

The Postal Service is seeking to modify its approach for reallocating Trial Balance account number 51265.000 to the CRA report. Typically, that account is reallocated to Component 203 in the Reallocated Trial Balance.[10] Component 203 is considered not variable with volume and is reported as institutional costs in the CRA report.[11] The Postal Service proposes two alternative reallocation methods. First to "zero out" Component 203 in the Cost Segment 18 tab of the Reallocated Trial Balance. Petition at 8. The second alternative is to instead reallocate account number 51265.000 to a newly created "Miscellaneous Items" tab within the Reallocated Trial Balance file. *Id.* at 9. According to the Postal Service both methods isolate the $57 billion reversal from institutional costs, avoiding detrimental regulatory consequences of having "nonsensical" negative institutional costs. *Id*.

The Mailers argue that the $57 billion reversal should be treated in the same manner as prior years expenses.[12] They contend that the treatment proposed by the Postal service would have a negative impact on market dominant mailers. *Id.* at 6. Their

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[10] *See* Docket No. ACR2021, Library Reference USPS-FY21-5, December 29, 2021.

[11] *See* Sum Desc at 18-21.

[12] See Letter to Erica A Barker, Secretary and Chief Administrative Officer, October 13, 2022, styled Motion for Reconsideration of Response to the Postal Service's Proposed Changes to Accepted Analytical Principles (Mailers' Letter), at 3.

argument centers around the impact to the Postal Service's density rate authority, if the adjustment is included in institutional costs, the density-based authority would be zero. *Id.*

The Public Representative recognizes the Mailers argument for including the reversal in institutional costs which would nullify the density-based rate authority. However, the Public Representative does not believe the drivers of density authority are affected by the PSRA's reversal of prior years' unpaid RHB expenses. Density authority is intended to offset unavoidable increases in per unit costs resulting from a decline in mail density. In Order No. 5763, the Commission explained that "Put simply, when the Postal Service delivers fewer mailpieces to more delivery points, those costs which are driven by factors other than marginal changes in volume are spread over fewer pieces, necessarily increasing the per-unit cost."[13] The Public Representative understands the effects of including the RHB reversal on the institutional cost ratio used in the density calculation, resulting in a density authority of zero. However, the drivers of the need for density-based authority are not affected by the passage of the PSRA or the removal of prior years' RHB expenses. The Postal Service incurred the same costs during FY 2022 that it would have regardless of the passage of the PSRA. Furthermore, negative institutional costs will impede on the Postal Service's ability to calculate the appropriate share of institutional costs in accordance with 39 U.S.C. § 3633(a)(3)) and the Federal income tax on Competitive products in accordance with 39 C.F.R. § 3060.40(c).

The Public Representative would also note that the $57 billion reversal is a non-cash adjustment. The Postal Service did not receive a reimbursement for prior years' RHB expenses, rather an extinguishment of debt. In its annual Financial Report, the Commission segregates certain unfunded retirement liabilities (including the unfunded RHB liability) and non-cash adjustments in order to more accurately analyze the state of Postal Service finances.[14] The RHB reversal has no impact on the Postal Service's operating costs as defined in the Commission's analysis, operating costs were still

[13] Docket No. RM2017-3, Order Adopting Rules for the System of Regulating Rates and Classes for Market Dominant Products, November 30, 2020, at 72. (Order No. 5763)

[14] *See* Financial Analysis of United States Postal Service Financial Results and 10-K Statement FY 2021, May 18, 2022, at 7-9.

incurred during FY 2022.[15] The removal of the RHB short term debt improves the Postal Service’s Balance Sheet but does not have any real effect on operations, except for the one-time anomalous adjustment to FY 2022 Total Net Income. Including the one-time reversal in institutional costs would negate actual costs accrued and misrepresent FY 2022 operating results.

For the reasons provided, the Public Representative recommends approval of the Postal Service’s proposal to segregate the $57 billion from institutional costs. Given the two options proposed in the Postal Service’s Notice, the Public Representative prefers the second approach by which Trial balance account number 51265.000 is reallocated to a separate “Miscellaneous Items” worksheet (tab) within in the Reallocated Trial Balance file. This approach offers more transparency than the first method, allowing the reader to trace the reversing entry from the Trial Balance to the CRA report. The first approach that simply zeroes out Component 203 in the Reallocated Trial Balance seems to create more confusion and results in the CRA report total costs not reconciling to the total costs in its Statement of Revenue and Expenses.

The Public Representative respectfully submits the foregoing comments for the Commission’s consideration.

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[15] Operating costs include salaries and benefits, transportation, supplies and services, etc. See Commission Financial Analysis at 15.